



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 4277-99

22 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Assistant Staff Judge Advocate for Military Law, Headquarters Marine Corps dated 10 January 2000, a copy of which is attached. The Board also considered your rebuttal statement of 10 February 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

In reaching its decision, the Board noted your contention pertaining to the amount of alcohol you consumed and the time period during which it was ingested. However, the Board also noted that you have submitted no evidence to support this contention and the record contains no such evidence. The Board also noted the documentation you submitted to the effect that false teeth or cavities may cause an inaccurate or elevated blood-alcohol content. However, you did not show who wrote that article, its title, in what publication it appeared, or whether it would skew the results of the specific breathalyzer used in your case.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:
1070
JAM3
10 JAN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF STAFF SERGEANT FREZEL DURANT 247 45
5913/2111 U.S. MARINE CORPS

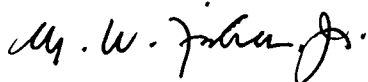
1. We are asked to provide an opinion on Petitioner's request to remove from his Official Military Personnel File (OMPF) and service record book (SRB) the record of nonjudicial punishment (NJP) he received on 17 Feb 1998.
2. We recommend the request be denied. Our analysis follows.
3. Background. On 17 February 1998, Petitioner was punished at NJP for Drunken Operation of a Motor Vehicle, in violation of Article 111, Uniform Code of Military Justice (UCMJ). Petitioner pled guilty to the offense. He was awarded forfeiture of \$450.00 per month for 2 months and 60 days restriction. He did not appeal the punishment. Petitioner now requests relief alleging that the NJP was unjust because the evidence considered by the NJP authority was insufficient.
4. Analysis
 - a. Petitioner's argument is without merit. The Report and Disposition of Offenses (NAVMC 118-12) that records the NJP is substantially correct in form and suggests no irregularity in the proceeding itself. The punishment imposed was authorized based on the grade of the officer who imposed it, and a review of the record does not suggest that the NJP authority abused her discretion. In addition, Petitioner fails to provide any evidence of substantive or procedural error in the NJP. The record indicates that Petitioner was informed of his right to refuse NJP, and that after consultation with legal counsel, he voluntarily accepted NJP. At the proceeding, he chose not to present evidence on the merits, and pled guilty to the offense. Further, he did not appeal the punishment.

- b. This petition is nothing more than Petitioner's request to go back in time in order to now exercise rights he knowingly and voluntarily waived. The interests of finality weigh heavily

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against this request, however, and Petitioner provides nothing to suggest that the interest of fairness support his request.

5. Conclusion. We recommend that the requested relief be denied.



M. W. FISHER, JR.
Head, Military Law Branch
Judge Advocate Division